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Supreme Court of the United States.

OCTOBER TERM, 1940.

REED & PRINCE MANUFACTURING COMPANY,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Reed & Prince Manufacturing Company (hereinafter referred to as the Company), prays that a writ of certiorari be issued by this Court to review the decree of the United States Circuit Court of Appeals for the First Circuit, entered in the above-entitled cause on April 2, 1941, enforcing an order of the National Labor Relations Board (hereinafter called the Board).

JURISDICTION.

The decree of the Circuit Court of Appeals for the First Circuit was entered April 2, 1941 (R. 2102). The jurisdic-

tion of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U.S.C. 347 (a)), and under Section 10 (e) and (f) of the National Labor Relations Act (49 Stat. 449; 29 U.S.C. 151).

Statute Involved.

The statute involved is the National Labor Relations Act (hereinafter called the Act), the pertinent provisions of which are set forth in Appendix A to this petition.

Opinion Below.

The opinion of the Circuit Court of Appeals for the First Circuit (R. 2071 ff.) has not yet been reported. The decision of respondent National Labor Relations Board (R. 1999-2046) is reported in 12 N.L.R.B. 944.

Statement.

Proceedings before the Board.

Charges and amended charges having been filed by the Steel Workers Organizing Committee of the C.I.O., a labor organization herein referred to as the Union, the Board, by its Regional Director at Boston, Massachusetts, on November 17, 1937, issued its complaint, charging the Company with (1) refusal to bargain collectively with the Union as the exclusive representative of the Company's employees; (2) discharging and refusing to reinstate four individuals because of alleged Union activities; and (3) carrying on a campaign of propaganda against the Union alleged to have been designed to discourage Union membership and to en-

courage a back-to-work movement and to induce the employees to sign individual contracts with the Company.

The complaint alleged that the Company thereby had engaged in unfair labor practices affecting commerce in violation of Section 8 (1), 8 (3) and 8 (5) of the Act (R. 13-18, 20).

In answer to the complaint the Company admitted that it was engaged in interstate commerce, but denied the alleged unfair labor practices (R. 21-31).

One Charles Ward Johnson, an attorney, filed a motion to intervene on behalf of 542 out of a total of 782 production and maintenance employees. The intervening petition denied all of the material allegations of the Board's complaint (R. 36-41).

A hearing was held at Worcester, Massachusetts, between December 6, 1937, and January 17, 1938, before a Trial Examiner designated by the Board. The Board, the Company, the Union, and Charles Ward Johnson, on behalf of the intervening petitioners, participated in the hearing.

On April 23, 1938, the Trial Examiner filed an intermediate report finding that the petitioner had violated Section 8 (1), 8 (3) and 8 (5) of the Act (R. 1924-1958). The Company and intervenors filed exceptions to the report (R. 1961-1997). Oral argument was had before the Board in Washington, D.C., on October 27, 1938, the Company and the Union participating (R. 1998). On May 15, 1939, the Board issued its decision and order (R. 1999-2046).

Board's Decision and Order.

The decision and order of the Board is reported in full in the record on pages 1999 to 2046.

Upon the findings made therein the Board concluded that the Company had violated Section 8 (1), 8 (3) and 8 (5) of the Act and entered an order directing the Company to cease

and desist from discouraging membership in the Union or any labor organization by discrimination in regard to hire or tenure of employment, etc.; from giving effect to the contract or contracts executed between the Company and its employees on July 13, 1937; from refusing to bargain collectively with the Union; from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. The order also affirmatively directed the Company to bargain with the Union, reinstate four former employees with back pay and post notice of compliance with the order.

The Facts.

By March 19, 1937, 703 of the 782 employees in the maintenance and production departments had signed cards accepting membership in the Union (R. 2004). A preliminary contract was signed on March 19, 1937, by and between the Company and the Union, by the terms of which the Company, upon the insistence of the Union, recognized the Union as the collective bargaining agency for the Company's employees who were members of the Union.

After five collective bargaining conferences in April and May, the parties had agreed on recognition, wages, hours of work, vacations and a minimum-wage provision (R. 2009). A strike was called by the Union on May 25, 1937 (R. 2009).

On June 2, 1937, the Company sent the Union representative a signed contract containing, among other things, all the terms which had been agreed upon during the prior negotiations. The Union refused to accept this contract.

On June 4 and 5, 1937 (R. 1793-2010), a conciliator from the United States Department of Labor met with representatives of the Union and the Company, after which the conciliator stated that he felt that all the differences could be settled if the Company would agree to a substitution of

the word "umpire" for the word "court" in the contract submitted by the Company (R. 2022-2023, 1938, 1362, 242).

On June 23, 1937, the Company filed a bill in equity in the Superior Court for the County of Worcester and Commonwealth of Massachusetts praying for an injunction seeking to enjoin the strike (R. 1094). On June 28, 1937, the Company engaged in further collective bargaining with the Union before the State Board of Arbitration and Conciliation.

On July 12, 1937, the Superior Court, after hearings on June 30 and June 31, 1937, participated in by the Company and the Union, issued an injunction prohibiting all strike activity, including picketing, the use of opprobrious epithets and any annoyance, threats or intimidation directed toward any employees who desired to return to work. The Superior Court made findings of fact and rulings of law to the effect that the strike was illegal, one of its principal purposes being to compel the Company to assent to the Union's demand for compulsory arbitration in place of due process of law (R. 1862-1864).

By July 12, 1937, 411 of the Company's employees had signed back-to-work petitions (R. 2019). On July 13, 1937, these 411 had caused their signatures to be attached to the contract which had been submitted by the Company to the Union. Subsequently 107 more employees affixed their signatures to this contract (R. 2020-2021). On July 12, 1937, the Company mailed identification cards to many of the employees for whom immediate work was available, inviting them back to work, including three of the four individuals whose reinstatement is now ordered by the Board. A copy of the injunction order was also mailed to all employees on July 12, 1937 (R. 1096, 1866, 1867).

On July 14, 1937, the plant was reopened. On July 15, 1937, an announcement was made by the Company that jobs

were being created in spite of the absence of orders and that all would be taken back to work without discrimination (R. 1096). The president and other officers of the Union and members of its negotiating committee were also re-employed (R. 301).

The Union, however, did not immediately call off the strike, notwithstanding the injunction, and continued to maintain pickets at the plant from July 12th to July 15th (R. 236). On July 15th the Union leaders addressed a Union meeting and advised the continuance of the strike and picketing in defiance of the injunction. It was decided to put a picket line around the plant, and a group of about 200 or more composed of Union members and sympathizers marched from the Union meeting and formed a picket line at the entrance to the Company's plant. As a result 60 or 70 police officers arrived at the scene (R. 245-246). In this group were the four employees whose reinstatement is now ordered by the Board. These four individuals in question, together with three Union organizers, were arrested by the police for continuing to yell "scab" and "rat" after refusing to heed repeated warnings (R. 245-246, 289-290, 304, 403, 404, 408, 1028, 1029, 1047, 1048, 1050).

After the arrests the Company announced to the four individuals who applied for re-employment that they would not be reinstated until they had cleared themselves of the charges for which they were arrested. One of the four, Mary Sullivan, never applied for reinstatement after her conviction in court and merely assumed that she would be told, as had the other three, that she had not cleared her name (R. 305, 306). On July 22, 1937, these four individuals were tried in the local District Court (R. 2036-2037). On July 22, 1937, these four individuals were found guilty of disturbing the peace and the complaints were placed on file (R. 1864-1866, 413).

After the illegal strike was called on May 25, 1937, the Company communicated with its employees by mail, radio talks and newspaper publicity, discussing the merits of the controversy between the Company and the Union, criticizing the illegal strike and the conduct of the Union leaders, and urging the employees to exercise their voting rights in the Union to discontinue the illegal strike. This so-called propaganda ceased entirely on June 14, 1937.

There is no finding by the Board that any unfair labor practice on the part of the Company preceded the calling of the strike on May 25, 1937. The Board found that the Union insisted upon a contract on behalf of its members only (R. 2033).

In January, 1938, one Charles Ward Johnson, an attorney, filed an amended motion to intervene in these proceedings on behalf of 547 employees, seeking to protect their rights under their executed contracts and denying the allegations of the Board's complaint (R. 2035-2036).

Questions Presented.

1. Whether the Board, by virtue of its authority as derived from the National Labor Relations Act, had jurisdiction or authority to order the reinstatement of four former employees of the Company under the following undisputed circumstances:

(*a*) These individuals had participated in a strike which was adjudicated by the courts of the Commonwealth of Massachusetts, and admitted by the Board, to have been an illegal strike under the laws of said Commonwealth.

(*b*) Said strike was not found to have been caused or preceded by any unfair labor practice on the part of the Company.

(*c*) These individuals had been enjoined by the Superior Court for the County of Worcester in said Commonwealth from engaging in any strike activity, including picketing of the Company's plant, or interfering with its business.

(*d*) After the issuance of said injunction and notice thereof to said individuals, they had been invited back to work by the Company.

(*e*) Following said injunction and invitation these individuals refused to go back to work and continued to engage in unlawful strike activity, including picketing; attended a Union meeting, where they were exhorted by Union leaders to defy the injunction, and marched in a body of about two hundred persons to the Company's plant and participated in mass picketing on and near the plant.

(*f*) These four individuals were arrested by the voluntary act of the local police, after repeated warnings by the police, for disturbing the peace, under circumstances which made riot and violence imminent, and they were all adjudicated guilty after a hearing in court, and the complaints were placed on file.

(*g*) These four individuals were refused employment upon application therefor after their arrest and prior to the court hearing, until they had cleared their names of the charges made against them by the police. One of said individuals never applied for re-employment after conviction in court.

(*h*) All other former employees who had applied for re-employment after the strike, including Union officials, were re-employed by the Company.

In summary, did the admittedly unlawful conduct of these four individuals preclude the exercise of the power by the Board to order their reinstatement?

2. Whether the Board's findings and orders were predicated upon an erroneous view that the National Labor Relations Act has restricted and limited the exercise of an employer's constitutional right of freedom of speech, and said order was therefore invalid.

3. Whether the Board's finding that the Company committed an unfair labor practice in violation of the Act by refusing to engage in collective bargaining with its employees, and the Board's order pursuant thereto, were warranted as a matter of law in view of the admitted fact that the Union at no time sought or purported to bargain on behalf of *all* of the Company's employees, but on the contrary at all times insisted upon bargaining on behalf of *its members only.*

4. Whether the Board's order of May 15, 1939, requiring the Company to bargain collectively with the Union, after a large majority of the employees had voluntarily executed contracts with the Company on July 13, 1937, and had intervened in these proceedings six months later, indicating that the Union no longer was authorized to act on their behalf, was warranted in the absence of an election as to the choice of a bargaining agency.

5. Whether the scope of the Board's orders is too broad in view of the specific unfair labor practices found to have been committed.

Petitioner's Contentions.

1. The unlawful conduct of the four individuals in question deprived the Board of legal power to order their reinstatement within the principle of *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240. (Supporting Brief, *infra*, pp. 12-13.)

2. The Board's statutory power of reinstatement is limited to "employees" and is restricted to remedial and not punitive orders. (Supporting Brief, *infra*, p. 14.)

3. The Board found that the Company's communications with its employees constituted a violation of Section 8 (1) of the Act and the decision clearly indicates that the finding of violation of Section 8 (3) and 8 (5) was predicated upon the erroneous and prejudicial conclusion that the Company's communications to its employees constituted an unfair labor practice. The Company contends that all of the Board's conclusions as to the commission of unfair labor practices by the Company and the Board's orders pursuant thereto are invalid because predicated upon an erroneous interpretation of the Act in violation of the First Amendment of the Constitution. (Supporting Brief, *infra*, p. 15.)

4. The Union's insistence and demand at all times to bargain on behalf of its members only, who did not comprise all of the employees of the Company, absolved the Company from any duty to bargain with the Union, and the Board's finding that the Company violated Section 8 (5) of the Act and its orders with reference thereto are therefore invalid. (Supporting Brief, p. 16.)

5. Under the circumstances of this case the Board exceeded its authority in directing the Company to continue to bargain collectively with the Union without first directing an election to be held to determine the choice of the employees as to a bargaining agency. (Supporting Brief, p. 17.)

6. The scope of the Board's orders in the form in which they were directed to be enforced by the Court below is too broad in view of the specific unfair labor practices found to have been committed. (Supporting Brief, p. 18.)

Reasons for Granting the Writ.

The case here presented for review, it is respectfully submitted, constitutes an arbitrary and unwarranted exercise by the Board of its high judicial function, in that the

Board's findings and orders are in direct conflict with the decision of this Court in the case of *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240, are predicated upon an erroneous interpretation of the Act, and constitute an invasion of the Company's constitutional rights.

The decision of the Board and the Court below also involves important questions of Federal law which have not been, but which should be, settled by this Court. A determination of these issues by this Court appears to be important for the future proper administration of the Act.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, and this Court should review the decision of the Circuit Court of Appeals for the First Circuit and finally reverse it.

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May 10, 1941.